COMMONWEALTH of VIRGINIA

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September 3, 2009

Mr. Craig Seltzer
U.S. Army Corps of Engineers
803 Front Street
Norfolk, Virginia 23510-1096

RE: Environmental Assessment Supplemental Information to the Final Environmental Impact Statement and Federal Consistency Determination for the Craney Island Eastward Expansion, Norfolk Harbor and Channels, Cities of Portsmouth and Norfolk, (DEQ 09-138F).

Dear Mr. Seltzer:

The Commonwealth of Virginia has completed its review of the June 2009 Environmental Assessment (EA) Supplemental Information to the Final Environmental Impact Statement, Federal Consistency Determination (FCD) and Environmental Impact Report (received July 7, 2009) for the Craney Island Eastward Expansion in the City of Portsmouth. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents and responding to appropriate federal officials on behalf of the Commonwealth. DEQ is also responsible for coordinating Virginia's review of FCDs submitted pursuant to the Coastal Zone Management Act (CZMA) and providing the state's response. The following agencies, localities and planning district commission participated in the review of the EA Supplement for this proposal:

Department of Environmental Quality
Department of Conservation and Recreation
Department of Game and Inland Fisheries
Virginia Marine Resources Commission
Virginia Institute of Marine Science
Department of Health
Department of Transportation
Department of Historic Resources
City of Chesapeake
City of Newport News
Hampton Roads Planning District Commission

The Cities of Norfolk, Portsmouth and Hampton were also invited to comment on the proposal.

PROJECT DESCRIPTION

The Norfolk District of the U.S. Army Corps of Engineers (Corps) and the Virginia Port Authority (VPA) prepared a Final Environmental Impact Statement (FEIS) in 2006 for the proposed 580-acre (now 522-acre) eastward expansion of the Craney Island Dredged Material Management Area (CIDMMA) and the development of a container terminal. A Record of Decision (ROD) was signed by the Assistant Secretary of the Army on August 20, 2007. The proposed project is located in the Port of Hampton Roads between the cities of Portsmouth and Norfolk, and consists of the construction of a 522-acre dredge disposal cell on the east side of CIDMMA. Once filled, the new cell would be turned over to VPA for the construction of a new marine terminal. This National Environmental Policy Act (NEPA) EA (the subject of this review) has been submitted to provide supplemental information to the FEIS that has been developed since the 2007 ROD. The supplemental information includes:

- a Virginia Institute of Marine Science 2007/2008 hydrodynamic/water quality study;
- a geotechnical evaluation for sand borrow activities;
- dredged material evaluations (Green Book Testing) for placement in the Norfolk Ocean Disposal Site;
- a dredged material management plan;
- minor additional wetlands impacts (at CIDMMA);
- a Coastal Zone Management Act (CZMA) Federal Consistency Determination;
- mitigation plan implementation effects; and
- historical and cultural resources investigations.

SUMMARY OF COMMENTS

Based on comments from reviewers, the Commonwealth of Virginia agrees that the plans, studies and supplemental information have not revealed any new significant impacts that would require the preparation of a supplemental EIS. The Supplemental Environmental Assessment appears to contain all of the information, which has been presented for review as part of the Joint Permit Application for the proposed project. Some of the concerns raised during the Commonwealth's review of the Environmental Impact Report have been addressed in the EA Supplement. Reviewers are confident that remaining concerns will be addressed during the permit review process.

This project is unlikely to have significant effects on ambient air quality, important farmland, historic structures, wildlife, or forest resources that cannot be mitigated. It will not adversely affect species of plants, animals, or insects listed by state agencies as rare, threatened, or

endangered. Agencies support the overall mitigation plan for the proposal, including the development of a Bird Management Plan proposed for the Environmental Operating Procedures for the site. This management plan should include measures to ensure the survival of rare species such as the piping plover and least tern. However, the Department of Game and Inland Fisheries continues to have concerns that increased large vessel traffic to and from the Craney Island site will adversely impact marine mammals and sea turtles.

As stated in previous reviews, significant impacts to surface waters and wetlands are anticipated and will require mitigation. The reduction in the footprint for the proposed eastward expansion from 580 to 522 acres is an improvement from a marine environmental perspective. Agencies have expressed concerns about some aspects of the proposed compensatory mitigation.

Although the Virginia Marine Resources Commission agrees in general that mitigation for the proposed impacts of the Craney Island Eastward Expansion are appropriate, the agency is concerned with the significant use of state-owned submerged land, under its jurisdiction, which is being proposed to meet the goals of mitigation. VMRC's primary concerns relate to the extensive use of sediment/stone isolation caps in the proposed sediment remediation, the location and placement of proposed oyster reefs, and the appropriateness of the proposed mitigation component at Ragged Island.

The DEQ Tidewater Regional Office notes that a significant portion of the environmental review process involves the manner in which project impacts will be compensated for to ensure that no net loss of surface water functions occurs. A review of the compensation discussion in EA Supplement suggests that the compensation plan has undergone undesirable modification from the plan originally presented in the 2006 FEIS. These modifications include claiming areas of natural attenuation at the Scuffletown Creek and Republic sites in the acreage of proposed sediment cleanup and a significant scaling back of the overall oyster restoration.

Reviewers (VMRC, DEQ and VIMS) conclude that the issues discussed in this response and any future issues that are identified will continue to be evaluated during the current Joint Permit Application process. The Hampton Roads Planning District Commission continues to view the eastward expansion and associated terminal development as advantageous to the continued economic development of the Hampton Roads region and the Commonwealth of Virginia.

COMMENTS ON SUPPLEMENTAL INFORMATION DISCUSSED IN THE EA

The following section provides a summary on six of the eight supplemental information, studies, and plans which were developed after the 2007 ROD and reviewers' comments on them. These include: a Virginia Institute of Marine Science 2007/2008 hydrodynamic/water quality study; a geotechnical evaluation for sand borrow activities;

dredged material evaluations (Green Book Testing) for placement in the Norfolk Ocean Disposal Site; minor additional wetlands impacts (at CIDMMA); mitigation plan implementation effects; and historical and cultural resources investigations.

1. VIMS 2007/2008 Hydrodynamic/Water Quality Study. According to the EA (page EA-4), extensive modeling was performed to evaluate the effects of the CIEE project on the hydrodynamics and water quality of the Lower James River, Hampton Roads Harbor, and the Elizabeth River. The modeling effort was led by the Virginia Institute of Marine Science with assistance from Computational Hydraulics and Transport LLC. A Technical Review Committee was established to monitor the progress of the modeling effort and perform an independent review of the methods and results.

Agency Comments. According to VIMS, the suspended sediment FATE model was applied in September 2008 for various scenarios reflecting good and bad dredging practices. This model predicts that total suspended solids (TSS) concentrations greater than 10-20 mg/L will not extend more than 100 meters from any dredging source.

2. Geotechnical Evaluation for Sand Borrow Activities. According to the EA Supplement (page EA-13), several potential sources have been identified for obtaining sand that is required for the CIEE project. Sand is required predominately for main and cross dike construction. Those sources include the excavation of sand from within the existing CIDMMA, the dredging of sand from one or more navigation channels, and obtaining sand from upland sources. Dredging of sand within the authorized limits and depths of designated navigation channels entering and exiting the lower Chesapeake Bay is a probable source of sand for the CIEE. The three navigation channels that have been identified as potential sources of sand (in descending sequence of their probability of use) are the: Atlantic Ocean Channel (AOC), Cape Henry Channel (CHC), and Thimble Shoals Channel (TSC).

Agency Comments. VIMS notes that the previous prediction of the life expectancy for CIDMMA has been extended from 3 to 9 years through the use of existing material contained within this disposal site. Other sources for borrow material were identified and geotechnical evaluations were performed. VIMS finds that it is unclear in the EA Supplement how the proposed use of dredged material from federal channels will conflict (if at all) with other public beneficial uses, such as the Virginia Beach Hurricane Protection Project.

3. Dredged Material Evaluations (Green Book Testing) for Placement in Norfolk Ocean Disposal Site. According to the EA Supplement (page EA-23), 90% of the dredged material from the CIEE project was to go to the Norfolk Ocean Disposal Site (NODS). Dredged materials from the deep horizon in the CIEE pre-dredge were further evaluated to ensure their suitability for placement in NODS pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA).

Agency Comments. VIMS notes that only material dredged from below 10 feet under the mud line that is free of anthropogenic contamination will be taken to Norfolk Ocean Disposal Site (NODS). The upper 10 feet with contamination will be taken to CIDMMA. According to VIMS, the Environmental Protection Agency concurs that the proposed ocean disposal is acceptable, with conditions for monitoring and a post disposal survey.

4. Minor Additional Wetlands Impacts (at CIDMMA). According to the EA Supplement (page EA-34), wetlands within the footprint of the CIEE area fall into three categories: tidal vegetated wetlands and non-tidal wetlands as defined in Section 404 of the Clean Water Act, and tidal non-vegetated wetlands as defined in Section 28.2-1300 of the Virginia State Code.

Approximately 0.2 acre of vegetated tidal wetland between the existing east perimeter dike and rip-rap shoreline will be impacted. Approximately 1.2 acres of non-tidal vegetated wetland located in several small disjunct patches between the existing east perimeter dike and rip-rap shoreline will be impacted. An area of non-vegetated shore having a width of about 40 feet and extending for a length of about 8,300 feet (eight acres) defined by state code as non-vegetated tidal wetlands (Section 28.2-1300) will be displaced by the project. However, construction of the CIEE perimeter dikes will create approximately four acres of similar tidal non-vegetated wetlands.

Agency Comments. VIMS notes that the eastward expansion footprint was reduced from 580 to 522 acres. VIMS believe that any reduction in filling of the subtidal area is desirable from a marine environmental perspective.

VIMS believes that the 2006 FEIS underestimated wetland impacts along the eastern dike of CIDMMA. The additional tidal wetland impacts now proposed are considered unavoidable. VIMS agrees that the existing tidal wetlands have marginal ecosystem value due to the predominance of miscellaneous rubble and the adjacent land use. The impacted wetland areas will be replaced by similar habitat on the new eastern dikes, but probably with less vegetated wetland area.

5. Mitigation Plan Implementation Effects. The EA Supplement (page EA-42) notes that the 2006 FEIS proposed a mitigation plan to offset anticipated impacts from the project. Mitigation projects were distributed among sediment restoration, wetland creation, oyster restoration, and a bird management plan. The mitigation plan in the FEIS included:

- Sediment Restoration: +/- 300,000 CYs , 67 Acres
- Wetland Mitigation (Elizabeth River): 52 Acres
- Oyster Restoration (Elizabeth River): 15 Acres
- Bird Management Plan Update for CIDMMA
- Ragged Island (Lower James River): 4 Acres Wetlands, 4 Acres Subaqueous Habitat
- Hoffler Creek (tributary to Lower James River) – 1 Acre Oysters

A detailed discussion of sediment restoration, wetland creation and oyster restoration is presented below.

General Comments.

VMRC finds that the EA Supplement appears to contain all of the information, which has been presented for review as part of the JPA for the proposed project. As further details have emerged since the release of the FEIS in 2006 and VMRC's receipt of the project's JPA last year, VMRC has become increasingly concerned with several aspects related to the project's proposed compensatory mitigation. The mitigation components of the project are being proposed in anticipation of DEQ's permitting requirements.

Although VMRC agrees in general that mitigation for the proposed impacts of the Craney Island Eastward Expansion are appropriate, the agency is concerned with the significant use of state-owned submerged land, under its jurisdiction, which is being proposed to meet the goals of mitigation. VMRC's primary concerns relate to the extensive use of sediment/stone isolation caps in the proposed sediment remediation, the location and placement of proposed oyster reefs, and the appropriateness of the proposed mitigation component at Ragged Island.

According to the DEQ Tidewater Regional Office, a significant portion of the environmental review process involves the manner in which project impacts will be compensated for to ensure that no net loss of surface water functions occurs. A review of the compensation discussion in EA Supplement suggests that the compensation plan has undergone undesirable modification from the plan originally presented in the 2006 FEIS. These modifications include claiming areas of natural attenuation at the Scuffletown Creek and Republic sites in the acreage of proposed sediment cleanup and a significant scaling back of the overall oyster restoration.

5(a) Sediment Mitigation/Remediation Plans. According to the EA Supplement (page EA-42), since the time of the FEIS completion in 2006, some modifications to the sediment remediation plan have been prompted by regulatory actions, while additional data collection and evaluation have allowed for the development of greater detail in plan implementation. The Wyckoff site is no longer available for remediation credit, and is no longer included in the plan. The sediment cleanup as part of the CIEE mitigation plan is now targeted for three locations:

- a portion of the Money Point site currently being designed by the Living River Trust;
- Republic Creosote (north and south); and
- Scuffletown Creek previously designed by the Corps as part of the Elizabeth River Restoration, Section 312 Civil Works project.

Agency Comments.

According to the VMRC, much of the sediment restoration proposed on the Southern Branch of the Elizabeth River entails the placement of sand and/or stone isolation caps over areas of contaminated river sediments, with little to no removal or dredging of the contaminants. Although caps have been shown to be a cost-effective method for isolating contaminated sediments from the marine environment, VMRC does not believe they are always appropriate. Furthermore, VMRC is concerned about the potential limitations to navigation and adverse impacts on riparian rights that could ultimately result from the current proposal.

VIMS states that the EA Supplement focuses on proposed sediment remediation at the Republic Creosote site (north and south). VIMS' concern with the current plan is the lack of an upland source evaluation and control plan. This assessment is a standard practice before remediation actions in the water are designed. The source(s) for any possible polycyclic aromatic hydrocarbon (PAH) recontamination should be identified and then removed or controlled if present. Neither the EA Supplement nor the supporting report in Appendix E explains why an upland source evaluation and control assessment is important or why it has not been conducted for the Republic sediment remediation project.

The current proposal also does not include descriptions of known PAH contamination in contact with groundwater on the adjacent parcels at Money Point and the upland control actions being taken (e.g. pumping out contaminated groundwater, underground retaining wall, phytoremediation plantings).

VIMS notes that other current and future navigation issues related to long-term cap integrity are under investigation. Since the original sediment remediation plan was developed, VIMS has become aware of the current plan to widen and deepen the Elizabeth River federal channel to -40 feet at mean low water (MLW). The EA Supplement does not refer to this channel project as it relates to the cap design models. The original design was based on permitted dredge depths of -35 feet MLW.

The Chesapeake Wetlands/Chesapeake Bay Preservation Act Board approved a Joint Permit Application (Wetlands #W-08-53/VMRC 08-1641) on August 19, 2009. The JPA was a modification to the original Corps/Virginia Port Authority permit for dredging and/or filling small portions of intertidal vegetated and non-vegetated wetlands at three locations between Money Point and the Allied Terminals facility, adjacent to the Southern Branch of the Elizabeth River, a tributary to the Chesapeake Bay (see Local Comments, page 21).

Recommendations.

The following recommendations stem from comments by the VMRC and VIMS.

- Contaminated sediments should be removed from the marine environment, with only a thin sand isolation cap installed after dredging operations to contain any remaining residual contamination.
- An upland source evaluation and the potential need for controls should be investigated further at the Republic site, especially the potential for groundwater movement into the river.

5(b) Wetland Mitigation Restoration Plans. The EA describes existing and proposed conditions at eight wetland restoration sites on the Elizabeth River, including:

- Republic South;
- Republic Middle;
- Republic North;
- Jones Creek 1 (JC1);
- Jones Creek 2/Jones Creek 2E (JC2/JC2E);
- Paradise Creek Park (PC-1);
- Shipyard Road (SR8); and
- Deep Creek (VPA1).

Furthermore, another site described in the document, Ragged Island Wildlife Management Area, is located in Isle of Wight County.

Wetland mitigation involves either:

1. removal of fill material to attain intertidal salt marsh elevations, grading and planting; and/or
2. depositing clean fill material, building an elevation for intertidal salt marsh, grading, and planting.

In higher wave energy environments, protective features such as rock/oyster shell sills/breakwaters are proposed (page EA-61).

Agency Comments.

VIMS finds that the EA Supplement does not reiterate the restoration objectives for the created tidal wetlands. In order to meet the compensation objectives outlined in the 2006 FEIS, the created wetlands are supposed to provide:

- substantial fisheries habitat benefits; and
- secondary production value.

This is a higher performance standard than the acreage of tidal marsh alone. The created wetlands should be:

- sustainable for the 50-year life of the project;
- accessible to aquatic organisms, particularly juvenile fish and crabs; and
- free of anthropogenic contamination.

The proposed conversion of upland habitat to tidal salt marshes at the Jones Creek (JC1/JC2/JC2E), Paradise Creek (PC1) and Republic (formerly Shotmeyer) parcels is acceptable to VIMS provided these sites are free of anthropogenic contamination that would compromise wetland functions. Soil evaluations have been conducted, but the results are not yet available. The EA Supplement refers to taking appropriate remediation measures if contamination is found, but does not specify what levels of contamination (if any) would disqualify the sites as suitable locations for wetland restoration and why.

The actual upland habitat tradeoffs at the Deep Creek parcels (SR8 and VPA1) are not completely described in the EA Supplement. The upland conditions do not appear to be as degraded from prior disturbances as the other sites. These riparian forest areas have important ecosystem roles in their current landscape setting. Only the loss of 100-foot Chesapeake Bay Resource Protection Area (RPA) buffer features adjacent to existing wetlands was accounted for in the EA Supplement.

The “Proposed Conditions” sections for each of the wetland restoration areas does not include upland riparian buffers to separate the created wetland areas from potentially impacting adjacent land uses, although at least some of the plan view drawings seem to depict these buffers. The inclusion of upland buffers where possible was an expected project design element in the 2006 FEIS and other supporting documents (e.g. Appendix F Wetland Mitigation Candidate Site Evaluation Report).

The proposed conversion of subaqueous lands to tidal wetlands has increased from 4.0 acres at Ragged Island to 10.5 acres at Ragged Island and the Republic site. The local tide ranges and the potential effects of sea level rise on these created wetland designs during the 50-year project life have not been described. Accessibility for aquatic organisms through the proposed breakwater structures at these sites is another important consideration.

The ecosystem services of tidal wetlands created above sediment remediation caps (7.4 acres) at the Republic site is still under review. This wetland restoration approach was not considered by the original mitigation subcommittee. The current proposal assumes compensation value for both sediment remediation and wetland restoration in the same footprint, but how salt marsh habitat created over highly contaminated but capped sediments will function is still under investigation.

5(c) Oyster Mitigation Restoration. According to the EA Supplement (page EA-66), the acreage estimates at the proposed oyster mitigation sites are approximate but will ultimately result in the following:

- Elizabeth River (15 acres);
- Hoffler Creek (approximately 1 acre);
- Republic (1 acre); and
- Ragged Island WMA (4 acres).

A total of approximately 20 acres of oyster reef restoration/mitigation will take place at the combined sites.

Agency Comments.

VMRC notes that until recently, little was known about the proposed oyster reefs. Similar to the use of isolation caps, VMRC is concerned about the reefs' potential to limit navigation and, to a lesser extent, riparian rights, particularly at the sites identified in Hoffler Creek in Portsmouth. VMRC will continue to explore this aspect during its review of the project's JPA to determine what, if any, impact could be expected at the proposed reef sites and how any potential use conflicts could be resolved.

Although it is expected that oyster reefs and sediment remediation would have a positive benefit to the marine habitat, VMRC is unsure that the proposed living shoreline project at Ragged Island will have any net benefit. To date, VMRC has not seen any analysis that shows the proposed living shoreline at Ragged Island would provide better marine habitat than the existing shallow water and inter-tidal habitats that lie within the project boundaries. Although the vast tidal marsh in this area has historically and continues to retreat landward, it would seem more appropriate to consider alternative shoreline stabilization methods, which limit encroachments over state-owned submerged land. VMRC further question whether conversion of one marine habitat to another should be considered to be mitigation at all.

VIMS notes that this is the first submittal of specific sites for 20 acres of proposed oyster restoration reefs. Since the FEIS was published in 2006, oyster restoration scientists have raised concerns that the track record of current restoration practices have not been successful and new approaches need to be considered (e.g. Mann and Powell, 2007; Mann et al, 2009). A substantial research and discovery effort also took place by the Corps recently in a Programmatic Environmental Impact Statement (PEIS) for oyster restoration in the Chesapeake Bay, including the use of a native and/or nonnative oyster.

Other than describing a "genetic rehabilitation strategy" to use disease resistant brood stock, the EA Supplement does not summarize the current scientific understanding of native oyster reef restoration, including findings in the non-native oyster PEIS and other reef monitoring and research efforts. Additional supporting information would help

demonstrate the site selection process and the potential for the restoration reefs to be self-sustaining, as outlined in the original 2006 FEIS compensation plan objectives.

Research findings that support the proposed use of alternative materials such as concrete, granite or reef balls, alone or in combination with oyster shell, should be described if such evidence is available.

According to the Department of Health (VDH) Division of Shellfish Sanitation (DSS), the project is located in condemned shellfish growing waters and the activity, as described, will not cause an increase in the size or type of the existing closure. All of the proposed oyster mitigation sites are in areas closed to shellfish harvest due to existing water quality issues or other potential contamination risks. Although reefs and seeded aquaculture sites can be targets of illegal harvest due to the relative ease of harvest, these sites should not be of concern provided that they can be adequately posted and patrolled.

Conclusion.

VMRC, DEQ and VIMS are confident that the issues discussed above and any future issues that are identified will be evaluated during the Joint Permit Application process.

6. Cultural/Historical Resources Effects.

According to the EA Supplement (page EA-68), as part of the investigation of proposed mitigation areas, research was carried out to determine the potential for cultural resources that would be affected by construction of the various mitigation measures. Research was previously done for the site of the CIEE and the results of that investigation were detailed in the 2006 FEIS. The document concludes that no further investigations are recommended for the identified mitigation areas.

Agency Comments. Based upon the information provided in the EA Supplement, DHR concurs with the determination that the supplemental information has not revealed any new significant effect that would require the preparation of a supplemental EIS.

Requirements. Comments from DHR on the effect of the undertaking on historic properties will be made after DHR receives the required cultural resources surveys within the Area of Potential Effect at identified locations pursuant to *Section 106 of the National Historic Preservation Act* (as amended) and its implementing regulations codified at 36 CRF Part 800, which require federal agencies to consider the effects of their undertakings on historic properties.

For further information and coordination, contact Ronald Grayson, DHR at (804) 367-2323, ext. 105.

ADDITIONAL ENVIRONMENTAL IMPACTS AND MITIGATION

This section provides Information and analysis of overall project impacts and mitigation recommendations and requirements.

1. Erosion and Sediment Control, and Stormwater Management. According to the EA Supplement (page EA-40), non-point source pollutants will be controlled through implementation of an erosion & sediment control plan that is prepared in accordance with State Department of Conservation & Recreation (DCR) guidelines and approved by DCR.

1(a) Agency Jurisdiction. DCR's Division of Soil and Water conservation administers the *Virginia Erosion and Sediment Control Law and Regulations* (*VESCL&R*) and *Virginia Stormwater Management Law and Regulations* (*VSWML&R*).

1(b) Erosion and Sediment Control and Stormwater Management Plans. According to the Department of Conservation and Recreation (DCR), the applicant and their authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with the *Virginia Erosion and Sediment Control Law and Regulations* (*VESCL&R*), *Virginia Stormwater Management Law and Regulations* (*VSML&R*) including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles, and related land-disturbance activities that result in the land-disturbance of greater than 2,500 square feet in a Chesapeake Bay Preservation Area would be regulated by *VESCL&R*. Accordingly, the applicant must prepare and implement erosion and sediment control (ESC) plan to ensure compliance with state law and regulations. The ESC plan is submitted to the DCR Regional Office that serves the area where the project is located for review for compliance. The applicant is ultimately responsible for achieving project compliance through oversight of on site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy. [Reference: *VESCL* §10.1-567].

1(c) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities. DCR is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program.

The operator or owner of construction activities involving land disturbance of equal to or greater than 2,500 square feet in areas designated as subject to the *Chesapeake Bay*

Preservation Area Designation and Management Regulations adopted pursuant to the *Chesapeake Bay Preservation Act* are required to register for coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project-specific stormwater pollution prevention plan (SWPPP). The SWPPP must be prepared prior to submission of the registration statement for coverage under the general permit and the SWPPP must address water quality and quantity in accordance with the *Virginia Stormwater Management Program* (*VSMP*) *Permit Regulations*. General information and registration forms for the General Permit are available on DCR's website at http://www.dcr.virginia.gov/soil_and_water/index.shtml. [Reference: *Virginia Stormwater Management Act* §10.1-603.1 *et seq*. and *VSMP Permit Regulations* 4 VAC-50 *et seq*.]

2. Chesapeake Bay Preservation Areas. The EA Supplement (page EA-41) states that according to the Department of Conservation and Recreation's (DCR) Division of Chesapeake Bay Local Assistance (DCBLA) the eastward expansion of Craney Island takes place on open water that is not under the jurisdiction of the *Chesapeake Bay Preservation Act* or the *Chesapeake Bay Preservation Area Designation and Management Regulations*.

2(a) Agency Jurisdiction. DCR-DCBLA administers the *Chesapeake Bay Preservation Act* (*Bay Act*) (Virginia Code §10.1-2100-10.1-2114) and *Chesapeake Bay Preservation Area Designation and Management Regulations* (*Regulations*) (9 VAC 10-20 *et seq.*).

2(b) Agency Comments. According to DCR-DCBLA, the eastward expansion of Craney Island through construction of a new dredged material placement cell, including a main dike and perimeter dikes, takes place on marine bottom and open water that is not under the jurisdiction of the *Chesapeake Bay Preservation Act & Regulations*. However, subsequent development of the 522-acre cell for a container terminal complex will require consistency with the *Chesapeake Bay Preservation Act & Regulations*.

2(c) Requirements. Future development on the constructed 522-acre facility should comply with the stormwater management criteria consistent with water quality protection provisions (4 VAC 3-20-71 *et seq*.) of the *Virginia Stormwater Management Regulations* (4 VAC 3-20), and for land disturbance over 2,500 square feet, the project should comply with the requirements of the *Virginia Erosion & Sediment Control Handbook*, Third Edition, 1992.

3. Air Pollution Control. According to the EA Supplement (page EA-41), some emission of pollutants from heavy equipment is anticipated to occur in the immediate vicinity of construction activity during dredging and handling of dredged material and dike construction operations. These activities are estimated to occur over a 5-year construction period starting about 2010 and ending in approximately 2015. However, a significant adverse air quality impact is not expected.

3(a) Agency Jurisdiction. DEQ's Air Quality Division, on behalf of the State Air Pollution Control Board, is responsible to develop regulations that become Virginia's *Air Pollution Control Law*. DEQ is charged to carry out mandates of the state law and related regulations as well as Virginia's federal obligations under the *Clean Air Act* as amended in 1990. The objective is to protect and enhance public health and quality of life through control and mitigation of air pollution. The division ensures the safety and quality of air in Virginia by monitoring and analyzing air quality data, regulating sources of air pollution, and working with local, state and federal agencies to plan and implement strategies to protect Virginia's air quality. The appropriate regional office is directly responsible for the issue of necessary permits to construct and operate all stationary sources in the region as well as to monitor emissions from these sources for compliance. As a part of this mandate, the environmental documents of new projects to be undertaken in the state are also reviewed. In the case of certain projects, additional evaluation and demonstration must be made under the general conformity provisions of state and federal law.

3(b) Ozone Maintenance Area. According to the DEQ Air Division, the project site is located in the Hampton Roads ozone (O_3) maintenance area and an emission control area for the contributors to ozone pollution, which are volatile organic compounds (VOCs) and nitrogen oxides ($NO_{x)}$. The project is accounted for and has been included in the applicable State Implementation Plan (SIP) for the Hampton Roads area. Therefore, there is no need for additional general conformity determination for the project.

The project sponsor should take all reasonable precautions to limit emissions of VOCs and NO_x, principally by controlling or limiting the burning of fossil fuels. Furthermore, there are limitations on the use of "cut-back" (liquefied asphalt cement, blended with petroleum solvents) that may apply (9 VAC 5-40-5490) to paving operations associated with the project. Moreover, there are time-of-year restrictions on its use during the months of April through October in VOC emission control areas.

3(c) Fugitive Dust. During deconstruction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the *Regulations for the Control and Abatement of Air Pollution*. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

3(d) Open Burning. If project activities include the burning of construction or demolition material, this activity must meet the requirements under 9 VAC 5-130 *et seq.* of the *Regulations* for open burning, and it may require a permit. The *Regulations* for open burning provide for, but do not require, the local adoption of a model ordinance concerning open burning. The Corps should contact City of Portsmouth officials to determine what local requirements, if any, exist.

4. Solid and Hazardous Wastes and Hazardous Materials. According to the EA Supplement (page EA-49), it is possible that some or all of the dewatered/treated dredged sediments could be placed in a solid waste landfill as long as they meet the landfill disposal criteria. There are several licensed landfills in Virginia that could be used for this purpose.

4(a) Agency Comments. DEQ's Waste Division found that both solid and hazardous waste issues were addressed in the EA Supplement. However, the report did not include a search of waste-related data bases. The Waste Division performed a cursory review of DEQ data files and determined that there are a number of hazardous waste, solid waste and voluntary remediation program (VRP) sites located within the same zip code as Craney Island. However the proximity of these sites to the subject site is unknown. These sites include:

Hazardous Waste Sites

- US Amines LLC-Portsmouth (VAR000502203), a large quantity generator (LQG) (ACTIVE).
- Virginia Chemicals Inc (VAR000012856 and VAR000012864), an LQG (ACTIVE).

The following website may be accessed by the Corps and VPA to locate additional information on these facilities using their identification numbers:

- http://www.epa.gov/echo/search_by_permit.html.

Solid Waste Sites

- US Navy-Craney Island-Fuel Terminal, PBR 061, Materials Recovery Facility.
- US Coast Guard-Support Center-Portsmouth, PBR 343, RMW Steam Sterilizer.
- Maryview Hospital, PBR 172, RMW Steam Sterilizer.
- Maryview Hospital, PBR 347, RMW Storage Facility.

Voluntary Remediation Program Sites

- Plaza Shopping Center (VRP00427), Enrolled in Program.
- Market Place Square Shopping Center (VRP00311), Enrolled in Program.
- BASF Portsmouth (Hoechst Celanese Corp.) (VRP00173), Enrolled in Program.

- U.S. Coast Guard Small Arms Firing Range Storm Sewer Outfall (VRP00376), Certificate Issued.

4(b) Wastes and Contaminated Dredge Spoils. Any sediment that is suspected of contamination or hazardous or solid wastes that are generated, transported, disposed, stored, or treated in Virginia, as defined in the Virginia Solid and Hazardous Waste Regulations, must be tested and disposed of in accordance with applicable federal, state, and local laws and regulations.

In accordance with 40 CFR 261.4(g) as adopted by the *Virginia Hazardous Waste Management Regulations* (*VHWMR*), "Dredge material that is subject to the requirements of a permit that has been issued under Section 404 of the federal *Water Pollution Control Act* (33 U.S.C 1344) or Section 103 of the *Marine Protection, Research, and Sanctuaries* Act of 1972 (33 U.S.C. 1413) is not a hazardous waste …." Dredge spoils, when managed in accordance with the Virginia State Water Control Board or other Virginia state agencies with similar authority, are conditionally exempt from the solid waste regulations (9 VAC 20-80-60.E) and are excluded from the waste barging regulations (9 VAC 20-170-10). However, the management of excavated contaminated soil from the identified wetland mitigation sites is subject to regulation under the VSWMR and VHWMR.

4(c) Requirements. Several of the identified sites in the EA Supplement have known contamination and additional information on the proposed management of this material will be required prior to implementing the wetland mitigation strategies. Any treatment, storage, or disposal of hazardous wastes must be conducted in concert with applicable state laws and regulations.

4(d) Recommendation. DEQ encourages all construction projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

5. Petroleum Storage Tanks.

5(a) Compliance and Inspections. On January 30, 2008, DEQ-TRO responded to the FEIS/EIR submitted for the proposal stating that the demolition of the fuel island area and the removal of the regulated underground petroleum storage tanks must be completed in accordance with the *Virginia Underground Storage Tank Regulation* sections 9 VAC 25-580-320, 330 and 350.

5(b) Petroleum Storage Tank Cleanups. There has been no petroleum release reported at or adjacent to the proposed project area. Petroleum contaminated soils or groundwater generated during construction of this project must be characterized and disposed of properly.

5(c) Requirements. The project proponent must comply with the following requirements of the Storage Tank Program.

- If evidence of a petroleum release is discovered during construction, it must be reported to DEQ-TRO.
- If the construction of this project will include the use of portable ASTs (>660 gallons) for equipment fuel, these tank(s) must be registered with DEQ-TRO using AST Registration form 7540-AST. This form is available at the DEQ web site at www.deq.virginia.gov.

6. Natural Heritage Resources.

6(a) Agency Jurisdiction. The mission of the Virginia Department of Conservation and Recreation is to conserve Virginia's natural and recreational resources. DCR supports a variety of environmental programs organized within seven divisions including the Division of Natural Heritage. The Natural Heritage Program's (DCR-DNH) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship. The Virginia Natural Area Preserves Act, 10.1-209 through 217 of the Code of Virginia, was passed in 1989 and codified DCR's powers and duties related to statewide biological inventory: maintaining a statewide database for conservation planning and project review, land protection for the conservation of biodiversity, and the protection and ecological management of natural heritage resources (the habitats of rare, threatened, and endangered species, significant natural communities, geologic sites, and other natural features).

6(b) Agency Comments. DCR-DNH searched its Biotics Data System for occurrences of natural heritage resources in the project areas. DCR reiterates the following comments from it February 2008 response to the FEIS/EIR. According to the information currently in DCR-DNH files, the piping plover (*Charadrius melodus*, G3/S2B,S1N/LT/LT), least tern (*Sterna antillarum*, G4/S2B/NL/SC), and black-necked stilt (*Himantopus mexicanus*, G5/S1B/NL/NL) have been documented on Craney Island within the dredge disposal site.

Piping Plover. The piping plover inhabits coastal areas, utilizing the flat, sandy beaches of barrier islands for breeding. Threats to this species include predation of eggs and young and the development and disturbance of barrier island breeding sites (Cross, 1991). The Piping Plover was last observed breeding on Craney Island in 1997. However it is currently using the island for migration and foraging from early spring to late August. This species is listed as threatened by the United States Fish and Wildlife Service (USFWS) and the Virginia Department of Game and Inland Fisheries (DGIF).

Least Tern. The least tern nests on broad, flat beaches with minimal vegetation and forages in saltwater near the shore. Threats to this species include loss of nesting habitat due to development and disturbance of breeding colonies by human activities and high

numbers of predators (Beck, 1991). Please note that the least tern is listed as a special concern species by DGIF.

Black-necked Stilts. Black-necked stilts primarily occur near shallow salt or fresh water bodies with soft muddy bottoms, including grassy marshes, wet savannas, mudflats, shallow ponds, flooded fields, and the borders of salt ponds. They nest along the shallow water of ponds, lakes, swamps, or lagoons and may nest on the ground or in the shallow water on a plant tussock. Black-necked stilts feed on insects, crustaceans, and small fish, as well as the seeds of aquatic plants.

DCR supports the proposal to develop a 10-year bird management plan for Craney Island. This management plan should include measures to ensure the survival of rare species such as the piping plover and least tern.

6(c) State-listed Plant and Insect Species. The Endangered Plant and Insect Species Act of 1979, Chapter 39 §3.1-1020 through 1030 of the Code of Virginia, as amended, authorizes the Virginia Department of Agriculture and Consumer Services (VDACS) to conserve, protect, and manage endangered and threatened species of plants and insects. The VDACS Virginia Endangered Plant and Insect Species Program personnel cooperates with the U.S. Fish and Wildlife Service (USFWS), DCR-DNH and other agencies and organizations on the recovery, protection or conservation of listed threatened or endangered species and designated plant and insect species that are rare throughout their worldwide ranges. In those instances where recovery plans, developed by USFWS, are available, adherence to the order and tasks outlined in the plans are followed to the extent possible.

Under a Memorandum of Agreement established between VDACS and DCR, DCR represents VDACS in comments regarding potential impacts on State-listed threatened and endangered plant and insect species. DCR finds that the proposed action will not affect any documented state-listed plants or insects.

6(d) State Natural Area Preserves. DCR files do not indicate the presence of any State Natural Area Preserves under the agency's jurisdiction in the project vicinity.

6(e) Recommendations. DCR-DNH offers the following recommendations:

- Continue to coordinate with USFWS and DGIF to ensure compliance with protected species legislation due to the legal status of the piping plover.
- Coordinate the Craney Island Bird Long-Term Management Plan with the DGIF Eastern Shore Biologist.
- Avoid the nesting sites for the least tern (April 15-August 1) and black-necked stilt (April 15-July 15).
- Contact DCR-DNH, Rene Hypes at (804) 371-2708 for an update on natural heritage information if a significant amount of time passes before the project is

initiated since new and updated information is continually added to Biotics.

7. Wildlife Resources.

7(a) Agency Jurisdiction. DGIF, as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (*Virginia Code* Title 29.1). DGIF is a consulting agency under the U.S. Fish and Wildlife Coordination Act (16 U.S.C. sections 661 et seq.), and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts.

7(b) Agency Comments. DGIF reiterates its comments to the FEIS/EIR submitted on February 19, 2008. DGIF supports the overall mitigation plan for the proposal, including the development of a Bird Management Plan proposed for the Environmental Operating Procedures for the site. DGIF believes the plan should include not only management of habitats and buffers associated with shorebirds and early successional nesters such as the state-listed endangered Wilson's plover, federal-listed threatened piping plover, and state-listed species of concern least tern; but, that the plan also includes a predator management program.

Also, DGIF to have concerns that increased large vessel traffic to and from the Craney Island site will adversely impact marine mammals and sea turtles.

7(c) Recommendations. DGIF staff provides that following recommendations:

- Coordinate mitigation activities planned for the Ragged Island Wildlife Management Area with DGIF's Region 1 Lands Manager.
- Coordinate the development of a Bird Management Plan for Craney Island with DGIF's Eastern Shore Biologist.
- Observe a time-of-year restriction on all instream work at the Craney island site from February 15 through June 30 of any year due to the scope of dredge and fill activities in the Elizabeth River and its proximity to known migration sites for Anadromous Fish.
- Adhere to strict erosion and sedimentation controls during construction of the expansion.
- Adhere to the 2002 recommendations made by the National Marine Fisheries Service regarding the protection of listed sea turtles associated with the dredging and collection of materials to be used at the expansion site.
- Include the monitoring of vessel strikes to marine mammals and sea turtles in any future supplemental EIS and/or subsequent mitigation plans.

- Develop a contingency and/or mitigation plan in coordination with the USFWS, National Marine Fisheries Service (NMFS), and DGIF, to address any increases in vessel strikes to marine mammals.

7(d) Agency Conclusion. DGIF finds the proposal consistent with the fisheries management enforceable policy of the Virginia Coastal Resources Management Program, assuming adherence to the above recommendations and erosion and sediment controls.

Contact Amy Ewing, DGIF, at (804) 367-2211, for additional information regarding these comments.

8. Water Supply.

8(a) Agency Jurisdiction. The Virginia Department of Health (VDH), Office of Drinking Water (ODW) reviews projects for the potential to impact public drinking water sources (groundwater wells, springs and surface water intakes).

8(b) Agency Comments. VDH finds that there are no groundwater sources within one mile of the project site and no surface water intakes within five miles. The project site is not located in Zone 1 or Zone 2 of any public surface water sources. For public surface water intakes Zone 1 is the area included within a 5-mile radius around the surface water intake and Zone 2 is the entire up-gradient area of the watershed. For public groundwater wells Zone 1 is an area included within a 1,000-foot radius the well and Zone 2 is a radius of one mile.

8(c) Conclusion. VDH-ODW finds that there are no apparent impacts to public drinking water resources as a result of the project.

8(d) Recommendation. According to VDH-ODW, potential impacts to public water distribution systems or sanitary sewage collection systems must be verified b the local utility.

Contact Barry Matthews, VDH at (804) 864-7515 for additional information.

9. Transportation Impacts.

9(a) Agency Comments. According to VDOT, an extensive analysis of the roadway network is currently underway through an Interchange Justification Report (IJR) that addresses the specific transportation issues associated with the expansion of the Craney Island Marine Terminal. The study evaluates alternatives that provide recommendations and improvements needed to accommodate future traffic needs. It is anticipated that project construction will provide improvements to create a roadway network that does not significantly impact traffic operations. Coordination of approved and planned projects in the immediate vicinity of this development is imperative for successful future traffic

operations. The multi-modal aspect associated with this project provides viable options to accommodate rail and vessel traffic.

9(b) Conclusion. VDOT concludes that the construction of this facility is consistent with its current use and inherent with the IJR and alternative will be developed that will not significantly impact multimodal transportation activities in the region.

For additional information, contact Ray Hunt, VDOT Hampton Roads Planning District at (757) 925-1595 or ray.hunt@vdot.virginia.gov.

10. Local Review.

10(a) Agency Jurisdiction. In accordance with CFR 930, Subpart A, §930.6(b) of the *Federal Consistency Regulations*, DEQ, on behalf of the state, is responsible for securing necessary review and comment from other state agencies, the public, regional government agencies, and local government agencies, in determining the Commonwealth's concurrence or objection to a federal consistency certification.

10(b) Agency Comments.

City of Chesapeake. According to the City of Chesapeake, the Chesapeake Wetlands/CBPA Board approved a Joint Permit Application (Wetlands #W-08-53/VMRC 08-1641) during the public hearing on August 19, 2009. The JPA was a modification to the original U S Army Corps of Engineers/Virginia Port Authority permit for dredging and/or filling small portions of intertidal vegetated and non-vegetated wetlands at three locations between Money Point and the Allied Terminals facility, adjacent to the Southern Branch of the Elizabeth River, a tributary to the Chesapeake Bay. The application had been continued from the July 15, 2009 hearing to resolve environmental concerns raised by the Virginia Institute of Marine Science (VIMS), and local staff. Conditions of the permit include:

1. Submit a 10-year monitoring plan for staff approval prior to issuance of a permit, in accordance with the *Wetlands Management Handbook*.
2. Provide a real estate instrument preserving the mitigation properties in perpetuity.
3. Provide a minimum 100-foot buffer surrounding the proposed compensation project areas, to the greatest extent possible.

For additional information, contact Brent Nielson, Chesapeake Planning Director at (757) 382-6176.

City of Newport News. The City of Newport News has no objection to the project and continues to support the Virginia Port Authority and the Corps in the endeavor.

For additional information, contact Randy Hildebrandt, Newport News City Manager at (757) 926-8411.

11. Regional Planning Area.

11(a) Agency Jurisdiction. In accordance with the Code of Virginia, Section 15.2-4207, planning district commissions encourage and facilitate local government cooperation and state-local cooperation in addressing, on a regional basis, problems of greater than local significance. The cooperation resulting from this is intended to facilitate the recognition and analysis of regional opportunities and take account of regional influences in planning and implementing public policies and services. Planning district commissions promote the orderly and efficient development of the physical, social and economic elements of the districts by planning, and encouraging and assisting localities to plan, for the future.

11(b) Agency Comments. The Hampton Roads Planning District Commission (HRPDC) reviewed the EA Supplement and contacted the affected localities. This project was previously reviewed by HRPDC in October 2005 as a draft environmental impact statement, in June 2006 as a federal consistency determination, and in February 2008 as a state environmental impact report (DEQ #08-013S). The current report relies on the previously reviewed federal environmental impact statement.

Based on this review, it appears that the proposal is generally consistent with local and regional plans and policies. The HRPDC continues to view the eastward expansion and associated terminal development as advantageous to the continued economic development of the Hampton Roads region and the Commonwealth of Virginia. A previous letter of support, sent to the Army Corps of Engineers and dated October 27, 2005, outlines the potential benefits of the project.

For additional information contact Dwight Farmer, HRPDC at (757) 420-8300.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities located inside or outside of Virginia's designated coastal management area that can have reasonably foreseeable effects on coastal resources or coastal uses must, to the maximum extent practicable, be implemented in a manner consistent with the Virginia Coastal Resources Management Program (VCP) (also called the Virginia Coastal Zone Management Program). The VCP consists of a network of programs administered by several agencies. The DEQ coordinates the review of federal consistency determinations with agencies administering the Enforceable and Advisory Policies of the VCP. A federal consistency determination was submitted with the EA Supplement that includes an analysis of the enforceable policies of the VCP.

Federal Consistency Public Participation

In accordance with 15 CFR § 930.2, public notice of the proposed action was published on DEQ's web site from July 10, 2009 to August 4, 2009. No public comments were received in response to the notice.

Federal Consistency Conditional Concurrence

Based on our review of the federal consistency determination, and the comments and recommendations submitted by agencies administering the enforceable policies of the VCP, DEQ concurs that this proposal is consistent with the VCP provided that the Corps obtain all applicable permits and approvals associated with the enforceable policies of the VCP. Applicable permits and approvals include:

- a permit issued by VMRC for encroachments on or over state-owned subaqueous beds as well as tidal wetlands authorized under Section 28.2-1200 *et seq*. of the Virginia Code;
- DEQ authorization through the Virginia Water Protection Permit program pursuant to Virginia Code §62.1-44.15:5; and
- permits issued by local wetlands for local impacts to wetlands.

In accordance with 15 CFR Part 930, §930.4, this conditional concurrence is based on the applicant obtaining all necessary permits and authorizations prior to any ground disturbance. Also the applicant must adhere to all the conditions of applicable permits and approvals. If the requirements of paragraphs (a)(1) through (2) of 15 CFR Part 930, Subpart A, §930.4 are not met, this conditional concurrence becomes an objection under 15 CFR Part 930, Subpart C, §930.43.

Also, other state approvals which may apply to this project are not included in this conditional concurrence. Therefore, the Corps must ensure that this project is constructed and operated in accordance with all applicable federal, state, and local laws and regulations. We encourage the Corps to consider the advisory policies of the VCP as well (see Attachment 2).

REGULATORY AND COORDINATION NEEDS

1. Water Quality and Wetland Impacts. Water quality and wetland impacts associated with this proposal require a Virginia Water Protection Permit issued by the DEQ Tidewater Regional Office pursuant to Virginia Code § 62.1-44.15:5. The Corps must continue working with the DEQ Tidewater Regional Office through the review process (JPA #08-1641) for final VWPP approval. For additional information and coordination regarding the VWPP, contact Bert Parolari (DEQ-TRO) at (757) 518-2166.

2. Subaqueous Lands Impacts. Subaqueous lands impacts associated with this proposal should be addressed through the completion of the Joint Permit Application with VMRC. The VMRC, pursuant to Chapter 12 of Title 28.2 of the Code of Virginia, is responsible for issuing permits for encroachments in, on, or over state-owned submerged lands throughout the Commonwealth. Coordination of this proposal under the JPA process may be accomplished through Ben McGinnis, VMRC at (757) 247-8028.

3. Erosion and Sediment Control and Stormwater Management.

3(a) Erosion and Sediment Control, and Stormwater Management. Future construction activities associated with this project shall comply with *Virginia Erosion and Sediment Control Law* (Virginia Code 10.1-567) and *Regulations* (4 VAC 50-30-30 *et seq*.) and Stormwater Management Law (Virginia Code 10.1-603.5) and regulations (4 VAC 3-20-210 *et seq*.). Activities that disturb 2,500 square feet or more of land would be regulated by VESCL&R and VSWML&R. Contact DCR's Suffolk Regional Office at (757) 925-2468, for assistance with developing or implementing E&S and/or Stormwater Management Plans to ensure project conformance.

3(b) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities. The operator or owner of projects involving land-disturbing activities of 2,500 square feet or more is required to apply for registration coverage under the Virginia Stormwater Management Program General Permit for Discharges of Stormwater from Construction Activities. Specific questions regarding the Stormwater Management Program requirements should be directed to Holly Sepety, DCR, at (804) 225-2613.

4. Air Quality Regulations. This project is subject to air regulations administered by the Department of Environmental Quality. The following sections of Virginia Administrative Code are applicable:

- 9 VAC 5-40-5490 *et seq.* for the use of "cut back" asphalt;
- 9 VAC 5-50-60 *et seq.* governing fugitive dust emissions; and
- 9 VAC 5-40-130 *et seq*., for open burning.

For additional information, contact Jane Workman, DEQ-TRO at (757) 518-2112. Also, contact local officials for information on any local requirements pertaining to open burning.

5. Solid Waste and Hazardous Substances.

5(a) Solid and Hazardous Waste Management Regulations. The treatment, storage, or disposal of hazardous wastes must be conducted in concert with applicable state laws and regulations. Applicable state regulations include:

- Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*;
- Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60);
- *Virginia Solid Waste Management Regulations* (VSWMR) (9VAC 20-80); and
- *Virginia Regulations for the Transportation of Hazardous Materials* (9VAC 20-110).

Applicable federal regulations are:

- *Resource Conservation and Recovery Act* (RCRA), 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and
- *U.S. Department of Transportation Rules for Transportation of Hazardous Materials*, 49 CFR Parts 107, 171.1-172.558.

6. Storage Tanks. The use of portable fuel AST(s) with a capacity of greater than 660 gallons, the tank(s) must be registered with DEQ using *AST Registration Form 7540-AST*. Tank registration may be accomplished by contacting Tom Madigan, DEQ Tidewater Regional Office, at (757) 518-2115 or by e-mail at temadigan@deq.virginia.gov.

7. Natural Heritage Resources. Contact Rene Hypes, DCR-DNH at (804) 371-2708, for additional information and coordination with regard to project impacts to the piping plover, least tern and black necked stilts.

8. Wildlife Resources and Protected Species. Mitigation activities planned for the Ragged Island Wildlife Management Area may be coordinated with DGIF's Region 1 Lands Manager, Phil West at (804) 829-6586 or at Phil.West@dgif.virginia.gov.

The Corps and VPA must continue coordination of this proposal with the USFWS and VDGIF due to the legal status of the piping plover. The Craney Island Bird Long-Term Management Plan may be coordinated with VDGIF Eastern Shore Biologist Ruth Boettcher at (757) 787-5911 or Ruth.Boettcher@dgif.virginia.gov.

Contact Amy Ewing, DGIF, at (804) 367-2211, for additional information and coordination.

9. Historic Resources. In accordance with Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, and its implementing regulation at 36 CFR Part 800, the Corps must continue to work with DHR on the future submittal of the required cultural resources surveys at several locations within the Area of Potential effect.

For additional information and coordination, contact Ronald Grayson, DHR at (804) 367-2323, ext. 105.

Thank you for the opportunity to review the Environmental Assessment Supplemental Information to the Final Environmental Impact Statement, Federal Consistency Determination for the Craney Island Eastward Expansion. Detailed comments of reviewing agencies are attached for your review. Please contact me at (804) 698-4325 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,

Ellie Irons, Manager
Office of Environmental Impact Review

Enclosures

cc: Michelle Hollis, DEQ-TRO
Paul Kohler, DEQ-ORP
Tony Watkinson, VMRC
Pam Mason, VIMS
Amy Ewing, DGIF
Roger Kirchen, DHR
Barry Matthews, VDH
Melanie Allen, VDOT
Heather Mantz, VPA
Randy Hildebrandt, City of Newport News
Brent Nielson, City of Chesapeake
Bob Baldwin, City of Portsmouth
Lee Rosenberg, City of Norfolk
Brian Ballard, City of Hampton
Dwight Farmer, HRPDC